111-395

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 313.

MYRA CLARK GAINES, APPELLANT,

vs.

CHARLES MILLER, ADMINISTRATOR OF SAMUEL HAMMOND, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 27, 1881.

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1 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

Be it remembered that on the eleventh day of May, A. D. 1880, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri, a certain amended bill of complaint, in words and figures following, to wit:

2 *Amended Bill.*

In the Circuit Court of the United States for the Eastern District of Missouri.

MYRA CLARK GAINES, Complainant.
against
CHARLES MILLER, Adm'r of Samuel Hammond, Dec'd, Defendant.

EASTERN DISTRICT OF MISSOURI, *ss:*

Now comes your oratrix, Myra Clark Gaines, and files this her amended petition in equity by leave of court, and by her solicitor humbly represents unto this honorable court that she is a citizen and resident of the State of New York, and has been such for 40 years last past. And that said defendant Charles Miller is a citizen and resident of the State of Missouri; that your oratrix was born in 1806 in the city of New Orleans, Louisiana; that her father was Daniel Clark, and her mother was Marie Zuline Clark, his wife, and your oratrix was the only child of said Daniel and Marie Zuline Clark born in lawful wedlock.

Your oratrix further shows that her father, said Daniel Clark, died at New Orleans on August 16th, 1813, and by his last
3 will and testament of July 13th, 1813, devised and bequeathed to your oratrix all his estate, real and personal, of which he was possessed at the time of his death, subject to certain legacies of moneys there inspecified, which said will was duly probated and proved on the 23d day of February, 1856, by the judgment and order of the supreme court of the State of Louisiana, all of which will more fully appear from the said will and testament and said decree, a copy of which is herewith filed.

And your oratrix further shows that she was called by the name of Myra Davis, and lived in the family of one Samuel B. Davis, in the city of New Orleans, Louisiana, from her earliest recollection; that said family left the city of New Orleans and removed to the city of Philadelphia, Pennsylvania, in the year 1812, when your oratrix was of the age of six years. And she accompanied said Davis family from New Orleans to Philadelphia, and remained with said family there till she married one William W. Whitney in the year 1832, she then being about twenty-six years of age; that she lived with said Whitney as his wife till his death, about the
4 year 1838; that after his death, about the year 1845, she married Major General Edward P. Gaines, and lived with him

till his death, about the year 1858; that since the death of said Gaines she has remained his widow.

Your oratrix further shows that during all the time up to about the year 1834 she was wholly ignorant and had no knowledge of the fact that she was the daughter of said Daniel Clark, and his sole devisee of all his real and personal estate, by virtue of said will of said Daniel Clark.

Your oratrix further shows unto this honorable court that early in the year 1834 she discovered that her father, Daniel Clark, had made, executed, and declared, as his last will and testament, the said will above described, and thereupon your oratrix and her husband, said William W. Whitney, proceeded before the probate court of New Orleans, La., on the 18th day of June, 1834, in the city of New Orleans, to prove up the said will, and at various times afterwards contin-ously made efforts before different courts in the
5 State of Louisiana to prove up said will, and finally proved said will, and obtained a decree ordering said will to be proved and probated, on or about the 23d day of February, 1856, as hereinbefore stated. But this order and decree reserved to one Richard Relf the right to oppose said decree as fully as if he had not been a party to said proceedings to prove up and probate said will.

And your oratrix further shows that said Relf and his legal representatives continue to oppose said decree in the courts of the State of Louisiana, and of the United States, until the month of May, 1868, when a decree was entered in the Supreme Court of the United States, in the case of Myra Clark Gaines against the city of New Orleans, declaring that your oratrix is the legitimate child and universal legatee and devisee of all the estate, real and personal, of said Daniel Clark, deceased, all of which will more fully appear from a copy of said decree herewith filed.

And your oratrix further shows that shortly after her father's death Richard Relf and Beverly Chew commenced to act as
6 executors of the estate of said Daniel Clark in their own wrong, without any authority of law, under a will of Daniel Clark of 1811, that had been and was revoked by said later will of 1813, which was and is the last and only valid will & testament of said Daniel Clark, deceased, and that one Mary Clark, devisee under said will of 1811, joined with said Relf & Chew, and acted with them in her own wrong and without any authority of law.

Your oratrix further shows that her said father, at the time of his death in 1813, was seized of valuable lands in the State of Louisiana, and in the Territory of Missouri, now the State of Missouri.

And the said Relf & Chew, pretending to act as executors of the said estate of Daniel Clark, deceased, did appoint one Samuel Hammond, then residing in said Territory of Missouri, in the year 1817, their agent to sell the lands of said Daniel Clark's estate in said Territory, and execute deeds therefor to the purchasers thereof, and to receive the moneys arising from the sale of said lands, and to pay over the same to the said Relf & Chew, the executors of said estate, in their own wrong, as aforesaid.

7 And said Samuel [Hammond] did sell many of the lands in Missouri belonging to said estate of Daniel Clark, dec'd, and did receive in money therefor, over all credits and offsets for commissions and expenses, the sum of six thousand eight hundred and forty-one $\frac{80}{100}$ dollars, on and prior to the first day of April, 1819, in St. Louis city, Missouri.

And your oratrix further shows that on or about the first Monday of August, 1819, the said executors and one Mary Clark, in their own wrong, in the circuit court of St. Louis county, Territory of Missouri, in a certain cause in which said Richard Relf, Beverly Chew, and Mary Clark, claiming under said revoked and void will of 1811, were plaintiffs, and said Samuel Hammond was defendant, a trial was had before said circuit court on a full hearing and appearance of said plaintiffs and defendant, and it appearing on said trial that said Samuel Hammond was justly indebted unto the estate of said Daniel Clark, deceased, in the sum of six thousand eight hundred and forty-one $\frac{80}{100}$ dollars, for moneys received by him upon the sales of lands belonging to the estate of said
8 Daniel Clark, deceased, thereupon it was adjudged by said court that the plaintiffs, Relf & Chew and Mary Clark do recover of and from said Hammond the sum of six thousand eight hundred & forty-one $\frac{80}{100}$ dollars, with costs of suit.

Your oratrix further shows that said Hammond took an appeal from said judgment to the supreme court of Missouri, and on or about the 22d day of May, 1823, said judgment of said circuit court was affirmed and execution was awarded upon said judgment, all of which will more full- appear by reference to said judgment and execution, a certified copy of which is now herewith shown to the court.

Your oratrix further shows that under and by virtue of said execution a levy was made upon certain lands of the United States claimed by said Hammond, lying in the township of St. Louis, and on the 8th day of October, 1823, said lands were sold by the sheriff, and among other lands sold by the sheriff under said execution was the north half of New Madrid survey, No. 2500, for Joseph Hunot's legal representatives, being a tract of land of about
9 240 acres in St. Louis township, now bounded north by Olive street, east by McPherson & James Conway's New Madrid location, south by the heirs of Peter Lindell, and west by the King's highway, all lying and being now in the city of St. Louis, State of Missouri.

And your oratrix further shows that at said sale the said Relf & Chew became the purchasers of said Hammond's interest in said north half of said New Madrid survey, No. 2500, for Joseph Hunot's legal representatives, and the amount bid by said Relf & Chew at said sale of said lands on said execution, after the payment of the costs, was $427\frac{77}{100}$ dollars, which sum was credited upon said execution as of the 8th October, 1823.

And your oratrix further shows that, by force of said trial and judgment, it is proved as against Samuel Hammond that he was indebted to the estate of said Daniel Clark, deceased, on the 5th day

of August, 1819, in the sum of 6,841$\frac{80}{100}$ dollars, for money received by said Hammond upon the sale of lands belonging to the estate of said Daniel Clark, deceased.

10 And your oratrix further shows that the said judgment of 1819, affirmed in 1823, as aforesaid, is competent evidence to prove that said Hammond was indebted to the estate of Daniel Clark, deceased, on the said 5th day of August, 1819, in the said sum of 6,841$\frac{80}{100}$ dollars, for the considerations as above stated; but your oratrix says that the said judgment does not operate to merge the said debt due the said estate of Daniel Clark, dec'd, in the said judgment so rendered in favor of said Relf & Chew, executors, in their own wrong, and said Mary Clark, devisee under said void and revoked will.

And your oratrix further shows that at the time said judgment was rendered she was an infant, under the age of thirteen years, residing in the city of Philadelphia, Pennsylvania, under the name of Myra Davis, and was wholly ignorant of all the facts above stated, in regard to said demand, judgment, execution, and sale, and is not bound or estopped by said judgment from claiming the money due by said Hammond to the estate of Daniel Clark, deceased, as appears from the proceedings in said suit.

11 And your oratrix further shows that the last will and testament of said Daniel Clark, deceased, as executed by the testator on the 13th day of July, 1813, was not proved up in the second district court of New Orleans until the year 1856, as above stated, and was not finally decreed by the United States Supreme Court to be the last and true will of said Clark until 1860; and during the time between the death of said Clark and said decree of 1856, said Relf & Chew, as executors in their own wrong, wrongfully converted a large portion of said Clark's estate to their own use, but they, as such executors in their own wrong, did not convert the said north half of said New Madrid survey, No. 2500, for Hunot or his legal representatives, containing about 240 acres of land, nor said 6,841$\frac{80}{100}$ dollars, to their own use, and by said sheriff's sale the said Relf & Chew acquired no title to said land, the title thereto then being vested in the United States, and the title to said lands remained vested in the United States until the United States granted the same, on the 30th June, 1864, to the whole of said survey No. 2500,

12 containing, in all, about 480 acres of land, to Joseph Hunot or his legal representatives, subject to all prior grants of the United States.

And your oratrix further shows that the legal representatives of Relf & Chew, the purchasers under said execution, held undisturbed possession of said land for many years, and up to the month of June, 1874, when the heirs and legal representatives of said Samuel Hammond commenced suits in ejectment in the circuit court for St. Louis county, for said lands, against the heirs of Peter Lindell, deceased, the legal representatives of Relf & Chew, the purchasers at the said sheriff's sale in 1823, and said suits were pending in said circuit court of St. Louis county for several years, when one of said cases brought by the heirs of said Samuel Hammond and James L.

D. Morrison against Nathan Coleman and Sarah L. Coleman, his wife, legal representatives of said Peter Lindell, having been tried in 1875, and a judgment having then been rendered in favor of the defendants, the case was appealed from the said circuit court
13 to the St. Louis court of appeals, when the said judgment was affirmed in the year 1877. And the plaintiffs then took an appeal to the supreme court of the State of Missouri, and on or about the 10th day of January, 1879, said supreme court reversed the judgments of said court of appeals and said circuit court, and directed a judgment to be entered in favor of the heirs & representatives of said Samuel Hammond.

And your oratrix was informed, for the first time, in the month of August, 1879, that the heirs of said Samuel Hammond had obtained said decision for the recovery of said land in the north half of New Madrid survey No. 2500, as the heirs of Samuel Hammond, claiming under him by the statutes of descents in the State of Missouri.

And your oratrix further shows that in said month of August, 1879, she was informed for the first time of the new title that had been found in 1879 to be in the heirs of said Samuel Hammond, deceased, by descent from their said ancestor, and of the existence of said debt of said Samuel Hammond, in his lifetime, to the estate of said Daniel Clark, deceased, as hereinbefore stated and set
14 forth, which debt in equity belonged to your oratrix on the final probate of said will of her said father, in her favor, of 1813, by the decree of the Supreme Court of the United States in 1868, and which was perfected in the second district court of the city of New Orleans, in the year 1856, as before stated.

And your oratrix caused an examination to be made in September and October, 1879, into the acts, obligations, and doings of said Samuel Hammond, in his lifetime, and into the rights, claims, and demands of the estate of Daniel Clark, deceased, as against the lands of the estate of Samuel Hammond, claimed by the legal representatives of said Samuel Hammond, deceased.

And your oratrix further shows that the said Samuel Hammond was a resident of the Territory of Missouri from about the year 1815 until about December, 1824; that said Hammond then absconded from, and secretly left, the State of Missouri, and never returned to said State, and at the time of his absconding from said State of Missouri he was insolvent, and was indebted to the said estate of said Daniel Clark, deceased, in the said sum of $6,841\frac{80}{100}$ dollars,
15 on account of moneys received by him upon the sale and delivery of the possession of certain lands belonging to the estate of said Daniel Clark, deceased.

And your oratrix claims that said Samuel Hammond was, in equity and good conscience, bound to pay the said sum of money to this plaintiff complainant, as the sole legal representative of said Daniel Clark, dec'd.

And your oratrix further complains and says, that said Samuel Hammond, after he secretly absconded from and left the State of Missouri, settled in the county of Edgefield, in the State of South

Carolina, and lived there until the month of August, 1842, when he died, leaving children and grandchildren as his heirs-at-law, who then, and since have, resided in the States of South Carolina, Georgia, Alabama, Tennessee, and Arkansas, but have never resided in Missouri, Pennsylvania, or Louisiana.

And your oratrix further shows that from her birth until she was six years of age she resided in the city of New Orleans, in the State of Louisiana, when she was removed to the city of Philadelphia, Pennsylvania, where she resided until her marriage in 1832, and continued to reside in said State of Pennsylvania until
16 about 1834, when she removed to New York, in the State of New York, and she has continued to reside in said State of New York ever since that time, excepting only occasional periods of residence in the District of Columbia, while your oratrix was prosecuting the cases and suits to procure an order to prove up and probate and establish her father's said last will and testament from the Supreme Court of the United States.

And your oratrix further shows that she has never resided in the State- of South Carolina, or Georgia, or Alabama, or Tennessee, or Arkansas; that said Samuel Hammond never paid to Relf, or Chew, or Mary Clark, or to your oratrix, or any other person, any part of said money, so in equity due to your oratrix as the sole legal representative of said Daniel Clark, deceased, as aforesaid.

And your oratrix further shows to the court that she never knew anything concerning the said transactions, suits, sales of lands, indebtedness, absconding, or other facts above stated concerning said Samuel Hammond, and his sales of land in the State of Mis-
17 souri belonging to Daniel Clark's estate, nor of the said judgment against said Hammond, or any of the facts concerning him or his heirs-at-law, nor of said proceedings by Relf & Chew on said judgment in the county of St. Louis, nor of the existence of any lands belonging to the heirs of said Samuel Hammond by descent, situate & being in the north half of said Hunot's New Madrid survey No. 2,500, in the said township of St. Louis, except as appears in pl'ff's suits brought in this court about 1848, until she was informed thereof by her solicitor in the month of August, 1879.

Which said bill in equity, so far as it relates to the matters and things concerning said Samuel Hammond, is as follows:

In the Circuit Court of the United States in and for the District of Missouri, in Chancery. Bill Filed October 2nd, 1848.

EDWARD P. GAINES AND MYRA CLARK GAINES, HIS WIFE,
against
PETER LINDELL AND OTHERS.

And your orator & oratrix further show unto your honors
18 that the said Richard Relf and Beverly Chew, pretending to act by & under the authority conferred upon them by the said court of probate of the city of New Orleans, as executors named in the aforesaid will, and at the same time to act by or under the authority of a power of attorney executed to them by the said Mary

Clark, the devisee named in said will, did, on or about the ninth day of May, one thousand eight hundred and seventeen, make & execute & deliver unto one Samuel Hammond, then of the city [of] St. Louis, now deceased, an act of procuration or power of attorney, an authenticated copy whereof is filed herewith & and marked in Schedule "B," and which your orator and oratrix pray may be made a part of this their bill of complaint, which said act of procuration or power of attorney is the only pretended authority or colour of authority which he, the said Samuel Hammond, ever had or received to interfere, meddle with, or dispose of the estate of the said Daniel Clark, deceased, or any part thereof situated within the then territory, now State of Missouri, in the manner hereafter particularly set forth.

That said act of procuration or power of attorney from said
19 Relf & Chew to said Hammond your orator and oratrix expressly charge gave no power, right, or authority whatsoever to said Hammond to interfere with, sell, or otherwise dispose of any property, real or personal, which then was found within the territory of Missouri; if the said Relf & Chew, or either of them, had at any time possessed the right, power, or authority to sell or otherwise dispose of, or in any manner interfere with the estate of said Dan'l Clark situated in the territory of Missouri, which your orator & oratrix expressly deny, your orator and oratrix further show unto your honors, and so charge the fact to be, that the said Samuel Hammond, pretending to act under & by virtue of the said act of procuration or power of attorney from said Relf & Chew, as aforesaid, did take control of, sell, & convey, or pretend to sell and convey, unto John B. N. Smith & John S. Nash all & singular the property described in Schedule A, hereinbefore referred to, and on such sale, he, the said Hammond, did receive from said Smith & said Nash, or one of them, a large sum of money, to wit: about the sum of six thousand dollars, as cash payment for the pur-
20 chase by said Nash & Smith of the property aforesaid.

That said Hammond refused & neglected to account for & pay over to said Relf & Chew the said sum of money so received by him of Smith & Nash, as aforesaid. Whereupon the said Relf & Chew & Mrs. Mary Clark, aforesaid, brought suit in the circuit court, in and for the county of St. Louis, against the said Hammond, and recovered judgment therein, which said judgment was afterwards, by the supreme court of the State of Missouri, in all things affirmed, and an execution was issued thereupon against the property & effects, goods & chattles, of the said Hammond. That, by virtue of said execution, the then sheriff of the county of St. Louis did levy upon and sell, and on such sale, to wit, on or about the fifth day of November, one thousand eight hundred & twenty-three, the said Richard Relf & Beverly Chew became the purchasers of a large amount of property belonging to said Sam'l Hammond situated in and near the city of St. Louis aforesaid, and the said sheriff did convey said property unto said Relf & Chew, in form as will more fully and at large appear by reference to a duly authen-

ticated copy of said judgment, execution, & sheriff's deed,
21 "in which sheriff's deed there is contained the north half of
New Madrid location for Joseph Hunot or his legal rep's, survey No. 2500, for 240 acres of land sold by said sheriff to Relf & Chew as the lands of Samuel Hammond, at the price of one hundred dollars, on the eighth day of October, 1823, at the court house door, in the city of St. Louis."

Your orator & oratrix further show unto your honors that it appears in said deed & proceedings of said sheriff that said Relf & Chew became the purchasers of said property in their individual & personal, & not in their representative, capacity, whereas your orator & oratrix charge, the fact is, that the said Relf and Chew purchased and held said property, as at that time they intended to do, as a part & parcel of the estate of the said Mary Clark, before then deceased, who pretended to claim in her lifetime as devisee of said Dan'l Clark, as aforesaid; and that they at that time considered said property, so conveyed by said sheriff, as held by them & each
of them in trust for the heirs-at-law or devisees of said Mary
22 Clark, deceased, and not otherwise, and that no money was
paid by Relf & Chew as the purchase-money on said sale, but the amount stated by said sheriff to have been paid in cash by said Relf & Chew was in truth endorsed on said judgment against said Hammond in favor of Relf & Chew & Mary Clark, aforesaid; that said Relf & Chew never gave any consideration for such property as purchasers individually, nor did they become purchasers at such sale in any other way or manner than in their representative capacity, as aforesaid, for the benefit of the heirs of said Mary Clark, who, having had at no time any right, title, or interest in & to said property, nor the money which said Hammond realized from said property sold by him as aforesaid, as your orator & oratrix expressly charges, they, the said Relf & Chew, held said property as implied trustees for the sole use & benefit of your oratrix, as the heir-at-law of the said Dan'l Clark, deceased, and not otherwise; and your orator & oratrix charge that the said Relf & Chew at no time had, individually & personally, any right, title, or interest whatsoever
in or to said property so purchased at the said sale by the
23 sheriff, and conveyed to said Relf & Chew, and that the said
John O. Fallon & the said Peter Lindell, & all others having acquired or pretended to acquire any right or pretended right or equity in & to said property, hereinafter described, had due, legal, constructive notice of the nature of the right, title, or interest which the said Relf & Chew, or either of them, had, or assumed to have, in & to said property.

And your orator & oratrix further show unto your honors that on or about the nineteenth day of October, one thousand eight hundred & thirty-eight, the said Richard Relf & Beverly Chew made & executed their power by attorney or act of procuration to the said John O'Fallon, empowering him to take charge of & sell any & all property belonging to them, the said Relf & Chew, situated in the then Territory, now State of Missouri.

And your orator & oratrix further show unto your honors that

on or about the twentieth day of March, one thousand eight hundred and forty, the said Richard Relf & Beverly Chew, by the said John O'Fallon, acting under the authority given by the aforesaid act of procuration or power of attorney, conveyed, by a quit-claim deed, unto the said Peter Lindell, one of the defendants herein, the
24 the land & premises described in the deed of the said Walker, then sheriff, to said Relf & Chew, marked in schedule "B," as aforesaid, as follows, to wit:

A tract of land containing two hundred & forty arpents, more or less, bounded on the south by land of Gratiott & Phillipson, on the west by land of John P. Calowe, & southeast by land of William Stokes & others, and included the big spring, known by the name of Hammond's springs, and that the consideration named in said deed is fifteen hundred dollars, and the said Relf & Chew in said deed distinctly express that they warrant the title against themselves and no others, as by the said deed, an authentic copy whereof is filed herewith & marked in schedule "E," & which your orator & oratrix pray may be made a part of this bill, will more fully & and at large appear.

And your orator & oratrix further show unto your honors that the above-described property was, at the time of the seizure & sale by the said then sheriff, as aforesaid, the sole property of the said Samuel Hammond, as is shown fully and at large by the following instruments in writing, duly executed and recorded in the proper offices, according to law, to wit:

25 One Joseph Hunot, on the twelfth day of May, one thousand eight hundred & ten, was the owner of a tract of land in the county of New Madrid, Missouri, which he on that day conveyed by deed to one Joseph Vandenbenden, a copy whereof, with the certificate of record, in due form, authenticated, is filed herewith & marked in schedule "F." The said Joseph Vandenbenden, by deed of the fourth day of November, one thousand eight hundred & fifteen, conveyed the same premises to one Rufus Eaton, an authentic copy whereof, with the certificate of recorded in due form, is filed herewith & marked in schedule "G." The said Rufus Eaton, by deed of the same date last aforesaid, conveyed the same premises to one Robert Simpson, an authenticated copy whereof is filed herewith & marked in schedule "H." The said Robert Simpson, by his deed, dated the 26th day of July, one thousand eight hundred and sixteen, reconveyed the same premises to said Rufus Eaton, a copy of which deed, duly authenticated, with the certificate of record, is filed herewith & marked in schedule "I;" all which last-named instruments, from the said Hunot to the said Easton, inclusive, affecting the same tract of land, your orator & ora-
26 trix pray may be made a part of this bill.

That the said Easton, being, as aforesaid, the sole, lawful, & equitable owner of said tract of land in New Madrid, and having, according to the act of Congress for the relief of the settlers & proprietors of land in the county of Madrid, obtained for a certificate for a location upon other lands, according to the provisions of said act, and located, by virtue of said certificate, the tract of land men-

tioned & described in the certificate & survey, an authentic copy whereof is filed herewith and marked in schedule "K," & which your orator & oratrix pray may be made a part of this bill of complaint.

That on or about the twentieth day of Sept., one thousand eight hundred & twenty-three, the said Rufus Easton sold and conveyed to the said Samuel Hammond that portion of the said location described in the said sheriff's deed, being two hundred & forty acres, more or less, as will appear by the deed from said Easton to said Hammond, of which an authentic copy is filed herewith and marked in schedule "L," & which your orator & your oratrix pray may be made a part of this their bill of complaint.

And your orator & oratrix further show unto your honors,
27 and so charge the fact to be, that at the time of said purchase by said Relf & Chew of the said property the same was held as a part of the estate of the said Daniel Clark, deceased, by the said Relf & Chew, in their representative capacity, and not otherwise, which fact was well known to the said John O. Fallon, & of which the said Peter Lindell had due legal constructive notice.

And your orator & oratrix further show unto your honors that the said Peter Lindell is now in the possession & claims to exercise ownership of the tract of land for which this suit is brought, to wit, that part of the said Hunot location, sold as aforesaid by said Rufus Easton to said Hammond, & including the big spring, known as Hammond's spring, which possession & claim of ownership your orator & oratrix charge to be is unfound in law, & ought not to prejudice or be opposed to the rights and equities of your oratrix in the premises set forth; and the said Peter Lindell absoluely refuses to deliver up said possession to your oratrix, although often requested so to do, to the manifest wrong, injury, & oppression of your oratrix.

And your orator & ortrax further show unto this honorable
28 court, and so charge the fact, that the said will of said Daniel Clark, made in the year one thousand eight hundred & eleven, was an olographic-will, recognized by the laws of the then territory, now State of Louisiana, as a valid & effectual will in form for the purpose therein expressed; but said will could not, by the laws of the then territory of Missouri, in force at the date of the pretended probate of said will, have any validity, force, or effect, or be probated or recorded in the said territory, now State of Missouri, as a will or devise of real estate, or pass said real estate or any interest therein to the devisee therein named against the rights or equities of your oratrix as heir-at-law of said Daniel Clark, but said real estate in the said territory of Missouri being a portion of the estate of said Daniel Clark would, and by force & effect of the law did, notwithstanding the said will aforesaid, pass to & vest in your oratrix as the sole heir-at-law of the said Dan'l Clark, deceased, and that neither the said Mary Clark, nor the person or persons pretending to act by her authority, or to claim through or under her, at any time had any right, power, authority, control over, or interest in

the real estate of the said Daniel Clark, situated in the then
29 territory, now State of Missouri, or any of the avails or proceeds thereof, or devived therefrom, either as agents, heirs, devisees, or otherwise, and, therefore, that any sum or sums of money which may have been received from said real estate, either by sales, rents, use, or otherwise, into whose hands soever the same may have come or may be found, or the estate purchased with said money is, in equity, an implied trust fund, and such person or persons is or are trustee or trustees of said money or estate, real or personal, for the sole use & benefit of your oratrix as the heir-at-law of the said Daniel Clark as aforesaid.

That the said conveyance of said Relf & Chew by said John O'Fallon of said property to said Peter Lindell as stated in the bill so adjudged & decreed to be of no force or effect to invest the said Peter Lindell with any right, title, or equity in & to said property, or any part thereof, and said act or deed of conveyance so held by said Peter Lindell may, by the order & decree of this honorable court, be delivered up and be cancelled, and no longer be set up & insisted upon as and evidence muniment of title or interest in said property in said Peter Lindell, or any person or persons hold-
30 ing under him any portion of said property.

That the said deed from Joseph Hunot to said Peter Lindell, conveying or pretending to convey, all or any portion of said Hunot location, may be adjudged to have invested the said Peter Lindell with no right, title, interest, or equity in or to that portion of said property claimed by your oratrix in this bill against the rights & equities of your oratrix, and that the same may be declared void & be ordered to be cancelled, so far as it purports to convey any portion of said property herein claimed by your oratrix.

That the said Peter Lindell may , by the order & decree of this honorable court be ordered, adjudged, & decreed to deliver up to your oratrix the peaceable & quiet possession, as far as he or those holding under him may do so, of all & singular said premises herein claimed by your oratrix, and that the said Peter Lindell & those holding under him, if any there be, may be adjudged & decreed to have held & to hold said property, and the issues, proceeds, rents, & profits thereof in trust for the benefit of your oratrix.

Decree of April 23, 1851.

MYRA CLARK GAINES, Compl'ts,
ag'st
PETER LINDELL, JOHN O'FALLON, & others, Def'ts. } In Chancery.

WEDNESDAY, *April* 23, 1851.

Present: Hon. R. W. Wells, U. S. dist. judge.

31 And now, at this day, comes again the parties by their solicitors, and the hearing of this cause by the court upon bill, answers, replications, and proofs in the cause being completed, and after debate of the matter by counsel, this court, upon consideration of the premises, doth think proper to order, adjudge, and decree, and it is accordingly ordered, adjudged, and decreed that the

bill of the said Myra Clark Gaines be, and the same is hereby, dismissed; and it is further ordered, adjudged, and decreed that the compl't, Myra Clark Gaines, pay the costs of this suit, and that the defendants, Peter Lindell and John O'Fallon, have execution against the said compl't, Myra Clark Gaines, for their costs by them about their defence in this behalf expended.

And your oratrix further shows that no administration was ever taken out upon the said estate of Samuel Hammond, in the State of Missouri, until the defendant, Charles Miller, took out letters of administration thereon on the 25th day of October, 1879, in the probate court of the city of St. Louis, Missouri, a certified copy of which is here produced and shown to the court.

32 That no other estate, real or personal, of said Hammond exists, to the knowledge of your oratrix, in said State of Missouri, or elsewhere, except his estate in the north half of said survey No. 2500, containing about 240 acres of land.

And your oratrix further shows that said Samuel Hammond, at the time of his death, had no estate, real or personal, in any other part of the United States or Territories; and your oratrix further shows that no letters of administration were ever taken out upon the estate of said Samuel Hamilton prior to the taking out said letters of administration by said Charles Miller, this defendant, as aforesaid.

And your oratrix further shows that said survey No. 2500, for Joseph Hunot or his legal representatives, was, for the first time, returned to the office of the recorder of land titles of the United States in the city of St. Louis, Missouri, on the 10th day of May, 1883, whereby the legal representatives of said Hunot became entitled to an equitable right in and to said north half of said survey No. 2500, which was subject to be perfected into a legal estate

33 whenever the United States granted the said land to the legal representatives of said Hunot, in accordance with said survey No. 2500. And your oratrix further shows that by an act of Congress of the United States, approved on the 30th day of June, 1864, the said New Madrid survey No. 2500, containing 480 acres of land, was granted to Joseph Hunot or his legal representatives, subject to all prior grants by the United States.

And your oratrix further shows that the said Samuel Hammond died intestate in the said year 1842, and upon the vesting of said legal estate in said Hunot, or his legal representatives, by force of said act of Congress of 1864, the legal representatives of Joseph Hunot became vested with the legal title in & to said north half of said survey No. 2500, which was finally determined by the supreme court of Missouri, on the 10th day of January, 1879, as hereinbefore stated, and the equitable claim of your oratrix, by reason of the premises, to charge the said lands in the north half of said survey No. 2500 with the payment of said debt of Samuel Hammond, deceased, of April 1, 1819, for 6,841$\frac{80}{100}$ dollars, then due &

34 owing to the estate of said Daniel Clark, deceased, to which debt your oratrix was then equitably entitled as sole devisee, for the first time became apparent on any record to any one or to

your oratrix, upon the entry of the judgment of the supreme court of Missouri, in January, 1879, in the case of said Hammond heirs & said Morrison against Nathan Coleman & Sarah L. Coleman, his wife: and then, for the first time after the accruing of said debt, on or about the first day of April, 1819, there appeared of record in said court in the State of Missouri that the land in the north half of said survey No. 2500 equitably belonged to Joseph Hunot and his legal representatives in May, 1833, and was converted into a legal estate by said act of Congress of 1864, vesting a legal title in said Hunot and his legal representatives, and by virtue of said decision of 1879 the heirs-at-law of said Samuel Hammond were for the first time declared to be the legal representatives of Joseph Hunot by descent, as the heirs-at-law of said Sam'l Hammond, deceased. Whereupon the said 240 acres of land in the north half of said survey No.
35 2500 first became known of record by force of said decision of 1879 as land belonging to the estate of said Sam'l Hammond, and then, for the first time, became subject to be included in an inventory of the estate of Samuel Hammond, deceased, and to be sold by order of the probate court of the city of St. Louis for the payment of such demands as might be proved up in any court of record against said estate, and thereafter in the probate court of St. Louis city.

And your oratrix further shows that she is equitably entitled in this suit to prove up the said demand against the said estate of Samuel Hammond, to the end that said 240 acres of land, or a sufficient part thereof, may be sold by order of said probate court to pay said debt, interest, and costs.

And your oratrix further shows that the defendant herein gives out and pretends that the claim & demand of your oratrix against the said defendant, administrator as aforesaid, for the amount of money equitably due to your oratrix from said Samuel Ham-
36 mond in his lifetime, on the first day of April, 1819, for the sum of $6{,}841\frac{80}{100}$ dollars, and interest thereon, is barred by the Statute of Limitations, because more than five years have expired before any suit was brought by your oratrix to recover said money demand after she became of age, in the year 1827, and because your oratrix did not procure the granting of letters of administration upon the estate of said Samuel Hammond within a reasonable time after his death, in 1842, and because your oratrix had knowledge at the time of the death of said Hammond in the county of Edgefield, South Carolina, because your oratrix did not procure letters of administration to be taken out on the said estate of Samuel Hammond within a reasonable time after the passage of said act of Congress of the 30th June, 1864, vesting the legal title in the land embraced in said New Madrid survey No. 2500 in Joseph Hunot, or his legal representatives.

Whereas your oratrix, admitting that she did not bring suit against said Hammond in his lifetime within five years after
37 she became of full age, the year 1827, and did not proure administration upon the estate of said Hammond at any time after the death of said Hammond, in 1842, or after the passage of

said act of Congress in 1864, until this defendant took out letters of administration on October 25, 1879, as hereinbefore stated.

Charges that said Samuel Hammond fraudulently absconded from and secretly left the State of Missouri, concealing himself from your oratrix by travelling to places unknown to your oratrix, and never returned to the State of Missouri, and having no seizen or title to the north half of said survey No. 2500 that would authorize an attachment in the State of Missouri against said land, or the interest of said Hammond therein, up to the time of the death of said Hammond in 1842. And your oratrix having no legal right to sue the said Samuel Hammond during his lifetime, by reason of the delays of the courts of justice in the State of Louisiana and in the District of Columbia to adjudge and decree the proving and probate of the said last will and testament of said Daniel Clark, deceased,
38 of 1813, as hereinbefore stated, and by reason of all the orther facts and averments in this petition, the right of your oratrix to sue was not legally vested in your oratrix until long after the death of said Samuel Hammond, and, until the passage of said act of Congress of 1864, there was no legal estate in the land embraced in the north half of said survey No. 2500, vested in the legal representatives of Joseph Hunot, nor any record evidence of any title to said lands being vested in the heirs of said Samuel Hammond until the said decision of said supreme court of Missouri, in January, 1879; and the said land being in the actual possession of Peter Lindell and his legal representatives from the year 1831 up to the 10th day of Janu-ry, 1879, under claim of title, your oratrix was not able to ascertain or find that the estate of Samuel Hammond, deceased, was entitled to any part of said lands in the north half of said survey No. 2500 until after the said decision of the supreme court of Missouri, on the 10th day of January, 1879, and your oratrix immediately, upon being informed by her attorney, in the month of August, 1879, of the existence of said estate of Samuel Hammond, then claimed by his heirs-at-law, did direct and
39 order her said attorney to procure the public administrator of the city of St. Louis, or some other responsible citizen of the city of St. Louis, to take out letters of administration upon the said estate of said Samuel Hammond, deceased, so as to prove up against said estate the said just and equitable demand of your oratrix, by a decree of this court, in the suit for the amount thereof, so as to charge the said real estate with the said debt and the interest thereon, and procure an allowance of the decree of this court in the probate court of the city of St. Louis, so as to subject the said lands of said estate to sale, by order of said probate court, for the payment of said debt, and interest and costs, as in justice and equity should be done.

And whereas your oratrix charges that the claim and demand here sued on arises out of the wrongful and fraudulent conversion of the moneys belonging to the said estate of Daniel Clark, deceased, by said Sam-el Hammond, under all the facts & circumstances as hereinbefore stated, and your oratrix has no remedy at law or in equity until the right of said Hammond's heirs appeared of record

in 1879, the said Statute of Limitations does not affect your
40 oratrix' right of recovery herein against the defendant, as administrator as aforesaid, for the said sum of 6,841^{80} dollars, with interest thereon, at six per cent. per annum, from the first day of April, 1819.

And your oratrix says, that in consequence of said Samuel Hammond's fraudulently absconding and secretly leaving the State of Missouri and concealing himself as hereinbefore stated, and in consequence of all the other facts and averments hereinbefore stated, the claim here sued upon is, in equity, exempted from the Statutes of Limitations in order to prevent such statutes from operating as a fraud upon your oratrix.

Your oratrix further shows that on the 25th day of October, 1879, after the said letters of administration were granted on the said estate of said Samuel Hammond, her agent demanded that the said lands embraced in the north half of said survey No. 2500 should be included in the inventory of said estate, which was done, and no other property, real, personal, or mixed, was found in the said city of St. Louis, or elsewhere, belonging to said estate.

To the end, therefore, that said real estate belonging to the said estate of Samuel Hammond, deceased, may be charged with
41 the payment of said money and interest thereon, your oratrix prays that this court to decree that the said estate of Samuel Hammond is indebted to your oratrix in the said sum of money demanded, with the interest thereon as aforesaid, and that she is equitably entitled to recover the same in this suit. And your oratrix prays for such other and further relief as the nature of the case may require, and that said defendant, if he can, show why your oratrix should not have the relief hereby prayed, and a decree as prayed, and that the defendant may, upon oath, to the best of his knowledge and belief, make answer to all and singular the premises.

May it please your honors to grant a writ of supœna, directed to said defendant, commanding him to appear at a suitable time & place before this court, to make answer to the premises and abide and perform such orders & decrees as to this court shall seem meet. And that this petition in equity being filed as an amendment to the original petition in this cause, the defendant may be permitted to appear and answer hereto upon service of a copy hereof, without the issue of the writ of subpœna, if said defendant shall so elect.

And your oratrix will ever pray, &c.

42 MYRA CLARK GAIN-S,
By her Solicitor, N. Oscar Gray.
BRITTON A. HILL,
Of Counsel for Comp't.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

N. Oscar Gray, attorney for Myra Clark Gaines, complainant, being fully informed of the matters above stated, being duly sworn, on oath says that he has read the foregoing petition and knows its contents, and that the matters & things therein stated, to the best of his

knowledge, information, and belief, are true, and those therein stated on information and belief he believes to be true.

N. OSCAR GRAY.

Sworn to and subscribed before me, this 10th day of May, 1880.

RALPH TALBOT, [SEAL.]
Notary Public.

Service of writ of subpœna waived by defendant, & he enters his appearance herein and accepts service of copy.

May 11th, 1880. CLINE, JAMISON & DAY,
Solicitors for Resp't.

43 And afterwards, to wit, on the 20th day of September, A D. 1880, the following demurrer to complainant's bill was filed for record in said cause, which said demurrer is in words & figures following, to wit:

Demurrer to Complainant's Bill.

In the United States Circuit Court for the Eastern District of Missouri.

MYRA CLARK GAINES, Complainant,
vs.
CHARLES MILLER, Administrator of the Estate of SAM'L HAMMOND, Deceased, Respondent. } No. 1577.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill to be true, in such manner and form as the same ar- therein set forth, doth demur thereto, and, for cause of demurrer, showeth that the said complainant has not by her said bill made such a case as entitles her in a court of equity to any relief as to the matters contained in said bill, or any such matters, and that she has not stated in her said bill any matters of equity whereon this court can make any decree or grant the complainant any relief or assistance.

First. Because it appears by complainant's bill that the mat-
44 ter in which she asks a decree is stale, outlawed, and was barred by the Statute of Limitations nearly sixty years ago.

Second. Because the bill shows no fraud or deceit practised by defendant or his intestate against complainant that would authorize this court to disregard the Statute of Limitations.

Third. Because the bill shows that the complainant had, more than fifty years ago, and continued to have, until barred by the Statute of Limitations, a plain and adequate remedy at law, and she only alleges her own ignorance and her litigation with others as the reason for her failure to prosecute.

Fourth. Because the bill shows that more than sixty years ago a suit was brought in a court of competent jurisdiction by those recognized by said court as the lawful representatives of Daniel Clark, and that judgment was rendered against said Samuel Hammond for the very money for which judgment is asked of this court; that said

judgment has never been set aside, vacated, or reversed, and that the same is a bar to this suit.

Fifth. Because the bill is merely a petition for money had and received, and does not show any ground upon which a court of
45 equity will take jurisdiction of such an action.

Wherefore this defendant asks the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill, or to any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained.

CHARLES MILLER,
Administrator of the Estate of Samuel Hammond, Deceased.
By CLINE, JAMISON & DAY,
AND D. T. JEWETT, *Sol'c't'rs.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Charles Miller, the above-named defendant, being duly sworn, on his oath says that the above demurrer is not interposed for delay.

CHARLES MILLER,
Adm'r of the Estate of Sam'l Hammond, Dec'd.

Sworn to and subscribed before me, this 18th day of September, 1880. (My commission expires March 3, 1883.)

[SEAL.] CHAS. R. GOODIN,
Notary Public, City of St. Louis.

The undersigned, counsel for defendant, certify that, in their opinion, *that* the above causes of demurrer are well founded in point of law.

CLINE, JAMISON & DAY.
D. T. JEWETT.

St. Louis, Sept. 18th, 1880.

46 And afterwards, to wit, on the fourth day of February, A. D. 1881, at a regular stated term of said court, the following further proceedings were had, and appear of record in said cause, to wit:

Decree of Feb'y 4, 1881.

MYRA CLARK GAINES
vs.
CHARLES MILLER, Administrator of Samuel Hammond's Estate } 1577.

This cause came on to be heard at this term on the bill of complaint and the demurrer thereto, and was argued by counsel.

Upon consideration whereof, and being fully advised in the premises, the court finds the equities herein for the respondent.

It is, therefore, now ordered, adjudged, and decreed that said demurrer be, and the same is, sustained.

It is further ordered, adjudged, and decreed that the bill of com-

knowledge, information, and belief, are true, and those therein stated on information and belief he believes to be true.

N. OSCAR GRAY.

Sworn to and subscribed before me, this 10th day of May, 1880.

RALPH TALBOT, [SEAL.]
Notary Public.

Service of writ of subpœna waived by defendant, & he enters his appearance herein and accepts service of copy.

May 11th, 1880. CLINE, JAMISON & DAY,
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44 ter in which she asks a decree is stale, outlawed, and was barred by the Statute of Limitations nearly sixty years ago.

Second. Because the bill shows no fraud or deceit practised by defendant or his intestate against complainant that would authorize this court to disregard the Statute of Limitations.

Third. Because the bill shows that the complainant had, more than fifty years ago, and continued to have, until barred by the Statute of Limitations, a plain and adequate remedy at law, and she only alleges her own ignorance and her litigation with others as the reason for her failure to prosecute.

Fourth. Because the bill shows that more than sixty years ago a suit was brought in a court of competent jurisdiction by those recognized by said court as the lawful representatives of Daniel Clark, and that judgment was rendered against said Samuel Hammond for the very money for which judgment is asked of this court; that said

judgment has never been set aside, vacated, or reversed, and that the same is a bar to this suit.

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45 equity will take jurisdiction of such an action.

Wherefore this defendant asks the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill, or to any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained.

CHARLES MILLER,
Administrator of the Estate of Samuel Hammond, Deceased.
By CLINE, JAMISON & DAY,
AND D. T. JEWETT, *Sol'c't'rs.*

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Charles Miller, the above-named defendant, being duly sworn, on his oath says that the above demurrer is not interposed for delay.

CHARLES MILLER,
Adm'r of the Estate of Sam'l Hammond, Dec'd.

Sworn to and subscribed before me, this 18th day of September, 1880. (My commission expires March 3, 1883.)

[SEAL.] CHAS. R. GOODIN,
Notary Public, City of St. Louis.

The undersigned, counsel for defendant, certify that, in their opinion, *that* the above causes of demurrer are well founded in point of law.

CLINE, JAMISON & DAY.
D. T. JEWETT.

St. Louis, Sept. 18th, 1880.

46 And afterwards, to wit, on the fourth day of February, A. D. 1881, at a regular stated term of said court, the following further proceedings were had, and appear of record in said cause, to wit:

Decree of Feb'y 4, 1881.

MYRA CLARK GAINES
vs.
CHARLES MILLER, Administrator of Samuel Hammond's Estate } 1577.

This cause came on to be heard at this term on the bill of complaint and the demurrer thereto, and was argued by counsel.

Upon consideration whereof, and being fully advised in the premises, the court finds the equities herein for the respondent.

It is, therefore, now ordered, adjudged, and decreed that said demurrer be, and the same is, sustained.

It is further ordered, adjudged, and decreed that the bill of com-

plaint be, and the same is, dismissed, and that the said respondent have and recover of complainant his costs herein expended, and that execution issue therefor.

47 And afterwards, to wit, on the ninth day of February, A. D. 1881, the following further proceedings were had, and appear of record in said cause, to wit:

MYRA CLARK GAINES
vs.
CHARLES MILLER, Administrator, &c. } 1577.

Now comes the complainants, by her attorneys, and prays the court for an appeal herein to remove this cause to the Supreme Court of the United States, and also presents her appeal bond in the sum of $500, which is approved by the court, and ordered to be filed as a part of the record herein.

It is further ordered that said appeal be, and the same is, allowed, and that the clerk of this court make up a transcript of the record herein, to be forwarded to said Supreme Court.

The said appeal bond is in words and figures following, to wit:

48 Know all men by these presents, that we, Myra Clark Gaines, principal, and William Preston Hill, security, are held and firmly bound unto Charles Miller, administrator of Samuel Hammond, deceased, in the full and just sum of five hundred dollars, to be paid to the said Charles Miller, administrator of Samuel Hammond, deceased, [his] heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this ninth day of February, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at the September term, 1880, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court, between Myra Clark Gaines, plaintiff, and Charles Miller, administrator of Samuel Hammond, dec'd, defendant, decree was rendered against the said Myra Clark Gaines, and the said Myra Clark Gaines having obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation, directed to the said defendant, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next.

Now, the condition of the above obligation is such, that if the said Myra Clark Gaines shall prosecute the said appeal to effect, and answer all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

MYRA CLARK GAINES, [SEAL.]
By OSCAR GRAY, *Her Attorney.* [SEAL.]
WM. PRESTON HILL. [SEAL.]

Approved by—
SAMUEL TREAT.

Endorsed: No. 1577. United States circuit court, eastern district of Missouri. Myra Clark Gaines *vs.* Chas. Miller, adm'r, &c. Bond. $500. ——, principal; ——, sureties. Filed 9th day of Feb'y, 1881. M. M. Price, clerk.

49 On the hearing of the cause the following opinion was delivered by Hon. Samuel Treat, judge:

Opinion of the Court.

In the United States Circuit Court.

MYRA CLARK GAINES, *vs.* SAMUEL HAMMOND'S ADM'R. } In Equity. Demurrer to the Bill.

I commenced to write an elaborate opinion, but found it expanding to such an extent that, for want of time, I abandoned the purpose. The case, as presented, involves many serious questions, if considered *seriatim*, but there is one controlling view which disposes of the whole matter.

The plaintiff was *sui juris* more than fifty years ago, and if she succeeded (which is doubtful) to the rights of Relf and Chew under the judgment of 1819, in their favor, no adequate reason has been assigned in law or equity for her failure to pursue her rights thereunder prior to 1879 or 1880. If she cannot have the benefit of said judgment in her own right, she is in a still worse condition. Relf and Chew, under the will of 1811, have been found, judicially, to have acted without authority; for said will, after protracted litigation, was held to have been superseded by the will of 1813. Hence, what Relf and Chew did, and what their agent, Hammond, did, was void, or voidable, as against said persons, and she has slept on her rights, if she had any, for more than fifty years.

But it is contended that, as Hammond absconded from Missouri in 1824, and died in 1842, and it was supposed his interest in the Hunot tract had been disposed of under the sheriff's sale in 1819, it was not known that he had any estate calling for administration till 1879.

Hammond had what is termed a New Madrid claim, upon which levy had been made under the judgment of 1819. That claim came to naught for failure to make the return required by the act of 1822. For that and other reasons stated by the supreme court of Missouri nothing passed to the purchasers at the sheriff's sale under the judgment of 1819.

If Hammond owed anything to the Clark estate she had a right to pursue her demand so soon as she attained her majority, and cannot tack her subsequent disabilities by successive covertures to prevent the operation of the statute of limitations. Hence if she claims that said judgment enures to her benefit there are two complete defences thereto: First, the statute of limitations; and, second, the presumption of payment after the lapse of fifty years. If her demand is on an open account against Hammond, and she is willing to waive his unauthorized action and treat him as her agent, that

demand accrued as early as 1819, and he has been dead, so far as she is concerned, for nearly thirty-eight years before this suit was brought.

It is claimed that inasmuch as no administration was taken on Hammond's estate until 1879, the plaintiff has the statutory period after letters of administration to establish her demand, however stale. I do not so read the Missouri decisions cited; and if they asserted any such doctrine there would be an end indefinitely to statutes of repose in case of death and failure to administer. The administration statutes require claimants to present their demands within the times stated, or stand barred. They do not revive claims previously barred by the statute of limitation. I so understand the supreme court of Missouri to hold—a ruling in conformity with well recognized doctrines on that subject.

It seems that Hammond, under the rulings of the U. S. Supreme Court, had no such interest in the Hunot tract, that, during his lifetime, he could have maintained ejectment therefor, or that could possibly have been reached by execution. By the special act of Congress in 1864, there was confirmed to him and his legal representatives the Hunot tract—that is, about twenty-two years after his death. Whatever may have been subsisting demands against him prior to his death, subject to be enforced through administration on his estate, it might be a grave question whether the grant of 1864 could be treated as his individual estate, subject to administration. At the time of his death neither he nor the purchasers at the sheriff's sale in 1819 had any legal interest in the Hunot tract. All interest he might have had in the same was barred in 1823 through his failure to comply with the act of 1822.

Thus matters stood until Congress, 22 years after his death, confirmed to his legal representatives the tract spoken of. It has been held that, even taking the broadest view of the doctrines laid down in Landes *vs.* Brant, Relf and Chew took nothing under the sheriff's deed of 1819 much less this plaintiff.

50 It seems that other parties in interest, through protracted litigation, ascertained in 1879 that the only legal representatives of Hammond under the act of 1864 were his heirs. So soon as that fact was thus judicially ascertained, the plaintiff caused administration to be had on Hammond's estates about 37 years after his death, in order to prove up, it may be a judgment to which she was not a party, rendered about 60 years before, or on an open account which, by waiving the original wrong, she might have had established in 1819, or at least as soon as she became *sui juris*—more than fifty years ago. The bill, however recites what has almost become judicial history, through the various decisions of many courts, and notably three by the United States Supreme Court, to wit, the long and painful struggle of the plaintiff to have her father's will of 1813 established, and her rights recognized thereunder—which struggle culminated in her favor before the act of 1864 referred to. Gaines *vs.* Hennen, 24 Howard. Who was responsible for this long delay? Hammond's position was known or readily ascertainable from 1819. The plaintiff might, if she had any rights

against him, have pursued them before 1830, and prior to Hammond's death. Because she was involved in a legal controversy with others, did the statute as to Hammond cease to run, whereby after the lapse of more than a half century she can pursue the Hammond estate? If so, then every person not a party to a suit must be held bound by its outcome, despite the statute of limitation; and thus the statutes of limitation become futile.

Reference has been made to certain decrees and judgments entered in favor of plaintiff by the U. S. circuit court in Louisiana. The facts and circumstances under which those decisions were had are unknown to this court. The cases seem to have been for the recovery of the possession of realty devised to her under the will of 1813, despite the sale made by Relf, Chew, and Mary Clark, under the will of 1811. So here, the property belonging to Daniel Clark's estate, sold by Hammond prior to 1819 (he acting as agent for Relf, Chew, and Mary Clark) may, in law, belong to this plaintiff, unless her rights thereto are barred; but she is not seeking to recover said realty, but the amount paid to Hammond for said void transfers. It may be that the statute of limitations would bar any suit against the purchasers from Hammond; but whether such be the fact or not it is not seen how she can recover from Hammond's heirs the money judgment claimed by her, and have the same made a charge upon the lands which came to his heirs under the act of 1864.

Again; her excuse for not proceeding in this matter at an earlier date, even if the same were valid, is met by the fact that in 1848 she filed a bill in this court wherein it appears that she was fully informed of all the facts that it is now averred she did not discover until a date long subsequent.

In no possible view of the case as presented by the bill has she any right to maintain the same.

The demurrer is sustained and the bill dismissed.

51 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings had in case No. 1577, of Myra Clark Gaines, plaintiff, against Charles Miller, administrator, &c., defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 4th day of March, in the year of our Lord eighteen hundred and eighty-one.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By T. L. CRAWFORD, *Deputy.*

Endorsed on cover: E. Missouri C. C. U. S. No. 313. Myra Clark Gaines, appellant, *vs.* Charles Miller, administrator of Samuel Hammond, deceased. Filed 27th September, 1881.

111-395

SUPREME COURT OF THE UNITED STATES.

October Term, 1883. No. 313.

MYRA CLARK GAINES, Complainant, Appellant,
vs.
SAMUEL HAMMONDS, Administrator, Def't.

The complainant by her attorney, Britton A. Hill, comes now here and assigns as errors in this suit the following:

1st. The court below erred in sustaining the demurrer of defendant to the complainant's bill of complaint.

2d. The court below should have given judgment for the complainant on said demurrer.

3d. The court below erred in holding that the lapse of time or the statute of limitations was any defence to this suit.

Wherefore complainant asks for judgment, &c.

BRITTON A. HILL,
Att'y for Compl't, Appellant.

Endorsed: No. —. Oct. T., 1883. Sup. ct. U. S. Myra Clark Gaines, appl't, *vs.* Sam'l Hammonds, adm'r Chas. Miller. Ass't of errors. B. A. Hill, sol'r for compl't. Supreme Court U. S. 1883, October term. No. 313. Myra Clark Gaines, appl't, *vs.* Chas. Miller, adm'r, &c. Assignment of errors. Office Supreme Court U. S. Filed Apr. 7, 1884. James H. McKenney, clerk.

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SUPREME COURT U.S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

MYRA CLARK GAINES,
Appellant Complainant,
vs.
SAMUEL HAMMONDS, ADMINISTRATOR,
Defendant.
} *In Equity.*

Brief for appellant by BRITTON A. HILL, of counsel, on appeal from the Circuit Court of the United States for the Eastern District of Missouri.

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Nixon-Jones Printing Co., Law Printers, 210 and 212 Pine Street, St. Louis.

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STATEMENT OF CASE.

This is a bill in equity for a decree for moneys held in trust by Samuel Hammond for the estate of Daniel Clark, from 1817 to 1842; said moneys arising from the sale of lands by Hammond as agent of Clark's estate in Missouri in 1815–16 and '17. Hammond became insolvent and absconded from Missouri in 1825 and all his lands there

had been sold by sheriff in 1823. Hammond never returned to Missouri; died in South Carolina in 1842. In 1864 Congress granted (13 U. S. Stat. 581–2) 240 acres of land in St. Louis to Hammond or his legal representatives, as grantees of Hunot, a New Madrid locator, whose claim was surveyed in 1818 by the United States. In 1874 Hammond's heirs sued Lindell's heirs for this land in ejectment; the Lindells had held adverse possession for 40 years, but in January, 1879, the Supreme Court of Missouri held the heirs of Hammond were the owners of the land; that the sheriff's sale of 1823 was void and that the title first passed from the United States to Hammond's heirs in June, 1864, by said act of Congress, on the 25th of October, 1879.

Charles Miller took letters of administration on Samuel Hammond's estate in St. Louis and inventoried these 240 acres of land as belonging to the estate, and Mrs. Gaines brought this suit in May, 1880, to subject said 240 acres of land to sale for the payment of the said trust debt due by Hammond to the estate of Daniel Clark. Complainant is the universal heir and legatee of Daniel Clark. See Record of Bill, pp. 3 to 31. The defendant filed a demurrer to the bill and the court below held the demand is barred by the statute of limitations. Complainant took an appeal to this court. The statement of the case will more fully appear from the bill of complaint in the record, pp. 3 to 30.

POINTS.

1st. The complainant is the universal legatee of Daniel Clark, and entitled to bring this suit for the demand due Clark's estate by Hammond in 1817.

2d. The suit is not barred by the statute of limitations.

3d. No legal representative of Clark's estate had any power to sue Hammond or his estate for the demand in

suit, until Clark's will was probated in 1856, and up to that time the statute did not run.

4th. After Hammond's death in 1842, the statute did not run against the demand sued for, until letters of administration were taken out upon his estate on the 25th of October, 1879.

5th. The secret absconding of Hammond from Missouri in 1825, with the money belonging to the estate of Daniel Clark, and his absence from the State until his death in 1842 in South Carolina, prevented the running of the statute against this demand, during the whole time of such absence from Missouri.

6th. The statute could not run against the complainant until she arrived of full age in 1827, and it could not run as against her until she was lawfully authorized to sue as universal legatee for the recovery of this demand.

7th. The equitable claim of Hammond to ask for a grant from Congress for the Hunot New Madrid location surveyed in 1818, did not ripen into a title during his life, and the 240 acres now sought to be charged with the payment of his debts were not granted him or his legal representatives until June 30th, 1864, and did not come into the possession of his heirs at law until January, 1879, when letters of administration were taken out to subject a few city lots of this large domain to the payment of just debts.

8th. In such case the statute will not begin to run until the title to the land vests in the heirs who take it subject to the payment of the debts of the ancestor. This title came to the heirs, incumbered with Hammond's debts.

9th. The heirs are now holding this land as the trustees for their ancestor's creditors.

10th. The statutes of Missouri impose upon the heirs at law, the incumbrance of the ancestor's debts, to the extent of the land inherited which *in equity is treated as a fund for the payment of debts.* The administrator is the trustee: 1st, for the creditors; 2d, for the heirs.

11th. A court of equity has complete jurisdiction over this suit. It can give full relief in the case by directing the matters to be proved on the hearing. The right of the complainant to sue as universal heir and legatee of Daniel Clark is already adjudged in this court; the evidence presented by the record of the judgment in case of the executors *de son tort* of Clark's estate against Hammond of 1823, is conclusive or at least *prima facie* evidence of Hammond's indebtedness to the estate of Daniel Clark.

BRIEF.

1. Myra Clark Gaines, the universal heir and legatee of Daniel Clark by force of the will of 1813, proved up and probated in 1856, is the proper person to sue in the Federal courts in her own name, for the recovery of this demand *arising out* of the sale of the lands of her father's estate in 1817 by S. Hammond in his lifetime, under power from *Exrs. de son tort*, which sales of land by Hammond, plaintiff approves and validates as if they had been made by the lawful executors of Daniel Clark, instead of by Relf and Chew, *Exrs. de son tort.*

Plaintiff, as universal heir and legatee of Daniel Clark, has been held by this court to be the person entitled to the *personal* and real property of the said estate, by a decree entered in the suit of *Gaines* v. *Hennen*, in the Supreme Court of the United States in equity, in May, 1861, 24 How. 615, as follows: "That the said Myra Clark Gaines is the "universal legatee of Daniel Clark, and as such entitled to "all the estate, whether *real or personal*, of which he, the

"said Daniel Clark, died possessed, subject only to the "payment of certain legacies therein named."

Of the three executors named in the will of Clark, of 1813, two had died, leaving the venerable De la Croix to be recognized as the surviving executor of 1856, when the courts of Louisiana probated the will of Daniel Clark. De la Croix did not survive this probate of the will more than four years and never qualified or gave bond as executor of the Clark estate. This court, seeing that Clark had lands in several States, that no debts remained to be paid, that no estate of Clark's required administration, made the complainant, by the decree in the Hennen case, the universal heir and legatee and the only person entitled to the real and personal property of the estate, thus excluding all claim by any administrator or executor, and forever settling the title of complainant to all the assets and property of the estate.

In this suit against the Hammond estate, the plaintiff seeks to recover the proceeds of lands sold by Hammond under the order of Relf and Chew, executors *de son tort;* the moneys received by Hammond from these sales would belong to the estate of Clark only in the event of the plaintiff approving the sales as universal legatee. By this suit, as such universal legatee, for the proceeds of such sales of lands of Clark's estate by Hammond as attorney in fact, the complainant as the sole person authorized by this court to take the estate, real or personal, and to elect to proceed to recover the land, has the power to ratify and approve the sales by Hammond, and by bringing this suit for the proceeds of these sales, she does ratify and confirm them. An administrator of Dan'l Clark's estate suing for such proceeds as a money demand against the estate of Sam'l Hammond, would have no power to ratify the sale of land by Hammond, as Mrs. Gaines can do in her capacity of universal legatee; so that she is the only person competent to ask a court of equity to decree that she has an equitable demand against the

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estate of Hammond on account of unauthorized sales of land of Clark's estate, in 1817, by him under orders of the executors *de son tort*, which sales to innocent purchasers will be approved by the decree of this court directing the complainant's demand to be allowed against the estate of Samuel Hammond who never paid said demand in his life time either to Relf and Chew, the executors *de son tort*, or to any other person. The decree we ask will do equity between all the parties, and charge Hammond's estate with the payment of the demand of the complainant as the universal heir and legatee of her father, and protect the innocent purchasers of the lands from the bad faith of Hammond and Clark, executors *de son tort*.

The objection of defendant that Myra Clark Gaines is not the proper party to sue, is wholly untenable. She is the only person entitled to sue and ratify the sales, and this is the true interpretation of the decision in *Gaines* v. *Hennen*, 24 How. 651.

2d. The plaintiff complainant is not barred by the statute of limitations from procuring an allowance of this demand by the decree of this court.

Daniel Clark made his last will in 1813, and died the same year. No probate of this will was made until 1856, and the complainant being an infant, not competent to act for herself or her father's estate, until the will in her favor was established, the statute of limitation did not run against Clark's estate or the complainant until the probate of Clark's will in 1856.

3d. But the statute could not commence running against the complainant or the estate of Daniel Clark in favor of Hammond's estate until the granting of letters on Hammond's estate in October, 1879. The decisions of Missouri are conclusive on this proposition.

Perry *v.* Perryman, 19 Mo. 469; McKenries *v.* Hill, 51 Mo. 303; Ayres' Administration *v.* Donnell, executor of Hix, 57 Mo. 397; Thompson *v.* Matthews, 51 Mo. 107.

Hammond died in 1842, but at the time of his death he had no seisin of any estate in this land known as the north half of the Hunot tract. Peter Lindell had held the possession under Relf and Chew, and under Hammond's sheriff's sale for many years before Hammond's death, and he and his heirs have held possession up to January, 1879, when the Supreme Court of Missouri held this sheriff's sale void, and Hammond's heirs to be the owners, as appears in that record.

This is the first notice in any record that Hammond's estate was entitled to any land, or that Hammond's heirs were entitled to any land, or inherited from Hammond any land in the north half of the Hunot tract.

The charge that plaintiff was negligent in not procuring an administration on Hammond's estate before the year 1879, is wholly refuted by the allegations in the bill that no authentic information as to the seisin of Hammond's heirs in these lands could be obtained from any source, until the decision of the Supreme Court of Missouri, on January 10, 1879, and in that same year letters of administration were taken out, and this suit was brought in May, 1880.

The complainant had not been guilty of any laches, for she has proceeded with the utmost diligence as soon as it became possible for any estate of Samuel Hammond to be subjected to sale by his creditors for the payment of the demands against the estate.

There was not any visible or tangible estate of Hammond's heirs in these lands, until the decision of the Supreme Court of Missouri in Hammond's Heirs *v.* Coleman, in January, 1879. Prior to that time, the pretensions of Hammond's heirs to any owership of the 240 acres of land in the north half of the Hunot tract would not have sold for fifty dollars. Not one of the many examiners of titles in the city of St. Louis had ever suspected that Hammond's heirs had any title or claim of title to this land.

The sheriffs deed of 1823, on the sale of Hammond's

lands, appears on the recorder's record to have been *sealed* and it was on the production of the so-called original deed, that it appeared not to be sealed. This was in 1876, and resulted in setting up a title in Hammond's heirs in 1879, that had no support from any record existing in the city and county of St. Louis, until the said decision of the Supreme Court of Missouri.

The possession of Peter Lindell under the title derived from the sheriff's sale of 1823, although forty years in duration, was held to work no disseisin, for the reason that the title to the land remained in the United States until granted by the Act of Congress of June 30, 1864; as was held in *Gibson* v. *Chouteau*, 13 Wallace, 92.

The Hammond heirs denied any seisin of the Hunot land prior to the 30th of June, 1864, in the Coleman case; so as to prevent the running of the statute of limitations in favor of Lindell's heirs. This was done upon the authority of *Easton* v. *Salisbury*, 21 How. 426; *Gibson* v. *Chouteau*, 13 Wall. 92; *Rector* v. *Ashley*, 6 Wallace, 142; Hot Springs Cases, 92 U. S. Rep. 698.

The conclusion of law declared by these authorities is, that New Madrid surveys not returned to the Recorder of Land Titles, within twelve months after the Act of 22d of April, 1822, or within 12 months after the Act of July 9, 1831, are null and void.

The return to the Recorder of Land Titles in the Hunot case was on the 10th of August, 1833, and being too late there was *no location;* and the land remained the property of the United States until the grant by Congress in 1864. The title of Hunot's legal representatives never passed to any one, or vested prior to the act of 30th of June, 1864.

It was a new title of 1864 referring to the survey of 1818, by Brown for Hunot, as the means of locating the land.

No title having passed from the U. S. prior to 1864; the estate of Hammond in this land had no existence prior to that date.

No administration could have been taken out to subject

these 240 acres of land of the Hammond estate to sale for the payment of debts of Hammond until after 1864.

But as the want of a seal of the court to the original deed of the sheriff made on the sale of Hammond by sheriff to Relf & Chew, in 1823, was not known to any one until Mr. Casselberry, in 1876, put the original deed into the case, no laches can be imputed to complainant prior to 1876, and the want of this seal produced no effect upon the title of the Lindell heirs in possession of the land until the Supreme Court reversed the judgment of the Circuit Court and the Court of Appeals, and gave a judgment for the Hammond heirs against Lindell's heirs, Coleman and wife, in 1879.

This judgment operated to give Hammond's heirs an estate in these lands, and this was the first moment that an administration on Hammond's estate would become practically effective to subject these lands to sale for the benefit of the creditors.

No laches can be charged against the complainant who has proceeded promptly in behalf of the creditors, to procure the issue of letters of administration, as soon as she discovered the vesting of the estate in Hammond's heirs in January, 1879.

3rd *a*. THE CONDITION OF THE CREDITORS OF HAMMOND.

There was neither seisin nor possession in Hammond, nor any title. The United States held the title and Lindell held the possession, but could not set up the statute of limitations. Hammond could not set up any equity, for there was none outstanding. The creditors of Hammond could not administer upon his estate, for he did not die siesed or possessed of the land. The grant of 1864 was made 22 years after Hammond's death, and vested the title in his heirs, subject to the debts of the deceased.

Administration could have been taken on the Hammond estate at any time after the act of Congress of 30th June, 1864, granting the land to the legal representatives of Hunot according to the survey of 1818. There is no limi-

tation in Missouri barring the demand of the complainant, until letters are taken out, and the letters may issue at any time, whenever assets are found.

"The doctrine established by this court is that the limitation does not run in favor of an estate during the time there is no administration," citing Polk *v.* Allen, 19 Mo. 467; McDonald *v.* Walton, 2 Mo. 43. See, also, Ayres' Admr., *v.* McDonnell, Ex., 57 Mo. 398.

4TH. AS TO THE TITLE BY DESCENT IN MISSOURI.

Sect. 1., chap. 45, Wagner's Stat. of Mo., p. 529, declares the law of descents of real estate to heirs at law, *shall be subject to the payment of the debts of the ancestor.*

5TH. SALE OF LAND BY ADMINISTRATOR.

Sect. 10, Art. 3, Chap. 12, p. 94, Wagner's Stat., declares the real estate of decedents may be sold to pay the debts and legacies.

Sects. 23, 25, 47, 48 and 49, direct how such sale shall be made. pp. 88, 89, *Ib.*

Sects. 48, 49, p. 89, *Ib.* gives the administr ator possession of the real estate of decedent subject to the statutory trusts for the benefit of creditors.

Sect. 11, p. 539, *Ib.*, makes the heirs at law take the estate inherited as trustees for the creditors.

In Metcalf *v.* Smith's Heirs, 40 Mo. Rep. 546, the court held: —

"An estate by descent renders the heir liable to the debts of his ancestor to the value of the property descended, and he holds the lands subject to the payment of the ancestor's debts."

4 Kent's Comm. (6th ed.) 419;
Watkins *v.* Holman, 16 Pet. 25.

So, in Buford *v.* Paroling's Exrs., 5 Dana's Rep. 287: Land descended is in equity a fund for the payment of the debts of the ancestor.

So, in Brittlebank *v.* Goodwin, 5 Eq. Cas. L. Rep. 553. "The liability of the administrator or heir does not depend on a new *assumpsit*, but originates from and depends entirely on the liability of the testator or intestate."

So in Hall *v.* Bumstead, 20 Pick. Rep. 2, the court held the heirs were bound for debts by simple contract as well as for specialty debts.

So in Ferguson *v.* Scott, 49 Miss. 503.

Immediately upon the death of the ancestor, the real estate descends to the heir, *charged*, to be sure, with the debts, which is in the nature of a secret incumbrance.

6th. The acts of Hammond in appropriating the moneys arising from the sale of the lands of Daniel Clark's estate to his own use, and secretly absconding from the State of Missouri, were fraudulent, and the statute of limitations did not commence to run against the complainant until she discovered the real estate of Hammond, deceased, in 1879, from the proceeds of which the debt of the fraudulent ancestor could be collected.

Atlantic National Bank *v.* Harris, 118 Mass. 152; First Mass. Turnpike Co. *v.* Field, 3 Mass. 206.
Miller *v.* Woodward, 8 Mo. 176;
Bischer *v.* Paulies, 58 Ind. 271;
Wear *v.* Skinner, 44 Md. 269;
Morgan *v.* Tiener, 83 Pa. St. 308;
Thompson *v.* Matthews, 51 Mo. 107;
Hunter *v.* Hunter, 50 Mo. 452;
Young *v.* Whitehead, 15 Kan. 581;
Moore *v.* Grun, 19 How. 72;
Sterns *v.* Page, 7 How. 829;
Meader *v.* Norton, 11 Wall. 458;
Broderick's Will, 21 Wall. 512, 519.

7th. Hammond was guilty of fraud against his creditors by refusing and neglecting to have the survey of 1818

of the Hunot New Madrid location for the land sought to be charged in this suit, returned to the Recorder of Land Titles in St. Louis before the 22d of April, 1823, so as to perfect his title under the said location. By reason of this fraud his title remained in a certain way secret, and in expectancy until 1864, and even down as late as 1879.

In Bailey *v.* Glover, 21 Wall. 346, it was held that in all such cases the statute will not run.

The trust for the benefit of creditors, is created by the statutes of Missouri, and continued from the death of Hammond in 1842 without being affected by any statute of limitations, until the letters of administration were issued on his estate in October, 1879.

Neither Daniel Clark's estate nor Mrs. Gaines' are barred by limitations prior to Hammond's death. She came of age in 1827. Her father, Daniel Clark, died in 1813. Hammond secretly absconded from Missouri in 1825, and never returned. He died in 1842. The valid will of Clark was not probated until 1856. The right of Clark's executors to sue then arose. The money Hammond took possession of in 1817 he held for the use of Daniel Clark's estate. There was no lawfully authorized executor of Daniel Clark's will until its admission to probate in 1856. From the day Hammond appropriated the money of Daniel Clark's estate to his own use, in 1817, without any lawful authority; up to his death in 1842, there was no person in being capable of, or having, any lawful authority to bring suit against him for its recovery. In such case the statute does not run against the estate of Clark, and the complainant never had any right to sue until this court conferred that power.

Angell on Lim. (5th ed.), §§ 54, 55.

If Myra Clark had had any right to sue Hammond on coming of age in 1827, the fact that Hammond absconded from and absented himself from the State of Missouri in

1825, and never returned, would prevent the running of the statute in his favor after the year 1825.

Rev. Code of Missouri, 1825, § 1, p. 511; Rev. Code of Missouri, 1835, § 7, p. 394; Cook's Executors *v.* Holmes, 29 Mo. 63.

CONCLUSION.

It is clear that no statute of limitations can lawfully bar this suit, and that defendant's demurrer is not well taken. It is equally clear that no disputed facts exist. The title of the complainant, as the universal legatee of Clark's estate, has been so frequently adjudged valid by this court that the defendant ought not to be allowed further to deny it. The judgment of Relf and Chew and Mary Clark against Hammond in 1823 for the sum of money due to Clark's estate is evidence of the amount of the debt due by Hammond to the estate of Clark for moneys received from the sales of the lands of the estate, although the judgment is in favor of executors *de son tort*, who had no legal right to recover it. Hammond and his heirs should be estopped from denying the fact adjudged against him in that suit, to wit: that he was justly indebted to the estate of Daniel Clark in the amount of money found to be due by the jury two-thirds of a century ago. This evidence is all that remains now, and it ought to be declared proof of the amount due the estate.

Complainant has ratified all the sales of her lands by Hammond to quiet the titles of the purchasers, and a court of equity has the right to decree that the evidence of the debt due by Hammond to Clark's estate, as contained in the judgment of 1819 may be used by complainant as *prima* evidence of the amount due.

A court of equity has full jurisdiction to hear and decide the questions arising in this case. See Story's Eq.,

Vol. 2, § 1521, and cases cited. See, also, Chetham *v.* Hoare, 9 Equity Cases, Law Rep. 576.

As equity follows the law in decisions on statutes of limitations, there should be no bar in this suit in equity, because in the action of ejectment for the same land, by the heirs of Hammond against the heirs of Lindell, an actual adverse possession by the Lindells for 40 years was not a valid defense at law.

It is this same land that we ask only a very small part, may be subjected to sale, to pay the honest debt, justly due by Hammond in his lifetime to the estate of Daniel Clark.

BRITTON A. HILL,
Of Counsel for Complainant.

St. Louis, April 4, 1884.

111-395

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1883–4.

MYRA CLARK GAINES,
Appellant.

vs.

CHARLES MILLER, Administrator of the Estate of SAMUEL HAMMOND, Deceased,
Appellee.

No. 313.

STATEMENT AND BRIEF.

HENRY H. DENISON,
Counsel for Appellee.

ST. LOUIS: PRINTED BY THE CENTRAL LAW JOURNAL.

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STATEMENT.

The appellant by her bill states that she is a resident of the State of New York and has been such for forty years past; that she is the daughter of Daniel Clark and of Marie Zulime Clark, his wife; that she was born in 1806; that Daniel Clark, her father, died August 16, 1813; that the said Daniel Clark left a will dated July 13, 1813, by which he devised all his estate to the appellant; that said will was admitted to probate February 23, 1856; that during her childhood she was known as Myra Davis, and did not know she was the daughter of said Daniel Clark, until the year 1834; that she moved to Philadelphia in 1812 being then six years of age; that she married William W. Whitney in 1832; that said Whitney died in 1838: that she married Edmund P. Gaines in 1845; that said Gaines died

in 1858; that she has since remained a widow; that on June 18, 1834, she presented for probate the said will dated July 13, 1813, and continually urged it until it was admitted to probate February 23, 1856, but that the decree reserved to Richard Relf the right to oppose the decree; that Relf and his legal representatives continued to oppose said decree until May, 1868; that Richard Relf and Beverly Chew acted as executors under a will of the said Daniel Clark, dated in 1811; that the said Daniel Clark at his death in 1813, owned valuable lands in Louisiana and Missouri; that the said Relf and Chew appointed Samuel Hammond in 1817, an agent to sell lands belonging to the estate of the said Daniel Clark, in Missouri, and to execute deeds; that the said Hammond sold lands and received money over and above credits and commissions to the extent of $6,841.80½, prior to April, 1819; that on the first Monday of August, 1819, Richard Relf, Beverly Chew, and Mary Clark sued the said Hammond for the moneys by him so received, and recovered judgment for said sum of $6,841.80½ and costs; that the said Hammond appealed from said judgment, and that the same was affirmed by the Supreme Court of Missouri, May 22, 1823; that on the 8th of October, 1823, execution was levied on the lands of the said Hammond, being U. S. Survey No. 2500; that the said Relf and Chew bought the said lands at the execution sale; that the amount bid after payment of the costs of sale, was $427.77 and that said amount was endorsed on the execution; that the said judgment of 1819 is competent evidence to prove debt; that appellant was an infant at time of said judgment; that the said will of Daniel Clark, of 1813, was not finally judicially decided to be his will until 1860; that the legal title to the said U. S. Survey No. 2500, was in the United States until 1864; that the said Relf and Chew and their legal representatives, held possession thereof until 1874: that suits in ejectment for said survey No. 2500, were brought in ~~1884~~ 1874, by said Hammond's

heirs; that judgment in favor of the Hammond heirs was rendered on January 10, 1879; that the appellant first learned of the said judgment in August, 1879; that appellant first learned of the debt of Hammond to Daniel Clark's estate in August, 1879; that she made, or caused to be made, an examination of the facts in September and October, 1879; that the said Hammond was a resident of Missouri from 1815 to December, 1824; that he then absconded, and was insolvent; that he settled in Edgefield County, South Carolina, and never returned to Missouri, and died in August, 1842; that she knew nothing of these facts excepting as appears in suit of Edmund P. Gaines and Myra Clark Gaines his wife, v. Peter Lindell, *et. al.*, brought in the Circuit Court of the United States, for the Eastern District of Missouri, in 1848; that no administration was ever taken out on the estate of said Hammond, until Charles Miller was appointed, October 25, 1879; that U. S. Survey No. 2500, was first returned in 1833, and that said return passed the equitable title; that the Act of Congress of June 30, 1864, passed the legal title; that the appellant became of age in 1827; that appellant admits that she did not bring suit against Hammond until more than five years after she became of age; that said Hammond fraudulently absconded, secretly left and concealed himself from the appellant; that said Hammond had no seizin or title that would authorize an attachment in Missouri; that appellant had no legal right to sue Hammond during his lifetime; that this claim arises out of wrongful and fraudulent conversion of moneys by said Hammond; that appellant had no remedy until 1879; that the Statutes of Limitations do not apply to bar her claim by reason of Hammond's fraudulent absconding and concealment.

To this bill the following demurrer was interposed:

MYRA CLARK GAINES,
Complainant,
v.
CHARLES MILLER, Admr. of the estate of SAMUEL HAMMOND, deceased,
Respondent.

No. 1577.
In the United States Circuit Court, for the Eastern District of Missouri.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and, for cause of demurrer showeth that the said complainant has not, by her said bill, made such a case as entitles her in a court of equity to any relief as to the matters contained in said bill, or any such matters, and that she has not stated in her said bill any matters of equity whereon this court can make any decree or grant the complainant any relief or assistance.

First. Because it appears by complainant's bill that the matter on which she asks a decree is stale, outlawed, and was barred by the Statute of Limitations nearly sixty years ago.

Second. Because the bill shows no fraud or deceit practiced by defendant or his intestate against complainant that would authorize this court to disregard the Statute of Limitations.

Third. Because the bill shows that the complainant had more than fifty years ago, and continued to have until barred by the Statute of Limitations, a plain and adequate remedy at law, and she only alleges her own ignorance, and her litigations with others, as the reasons for her failure to prosecute.

Fourth. Because the bill shows that more than sixty years ago a suit was brought in a court of competent jurisdiction, by those recognized by said court as the lawful representatives of Daniel Clark, and that judgment was rendered against said Samuel Hammond for the very money for which judgment is asked of this court, that said judgment has never been set aside, vacated or reversed and that the same is a bar to this suit.

Fifth. Because the bill is merely a petition for money had and received, and does not show any ground upon which a court of equity will take jurisdiction of such an action.

Wherefore this defendant asks the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or to any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

This demurrer was argued in the Circuit Court for the Eastern District of Missouri, before McCrary and Treat, JJ., the demurrer was sustained, and the bill was dismissed.

From which judgment of the Circuit Court the appellant brings the cause into this honorable court by appeal.

BRIEF.

The appellant claims as the sole devisee and legatee of Daniel Clark, under a will dated in 1813, which was not finally proved and established until 1868.

Due administration had been had upon Clark's estate in 1813, under a will dated in 1811, by Relf and Chew, named as executors in said will; and they had been acting as such

executors for more than twenty years, before the will of 1813 was produced by the appellant.

Relf and Chew then were not executors *de son tort*. They were *de jure* as well as *de facto* executors of the estate of Daniel Clark, until the second will was established. Certainly so, until it was *produced* in 1834, and their acts as such executors, within the limits of their powers, cannot be assailed collaterally.

Where the estate has been fully settled, and all the moneys in the hands of the administrator have been paid over in pursuance of an order of court, and a will is subsequently discovered and proved, the executor cannot compel such administrator to account for the money received and paid over.

Barkaloo v. Emerich, 18 Ohio 268.
Bigelow v. Bigelow, 4 Ohio 138.
Kittredge v. Folsom, 8 N. H. 98.
Price v. Nesbitt, 1 Hill Ch. 445.
Poag v. Carroll, Dudley (S. C.) 1.
Allen v. Dundas, 3 D. and E. 125.

In

Patton's Appeal, 31 Pa. St. 465,

where an administration was revoked, before the estate was fully administered, and letters testamentary granted upon a will, the court says:

"We do not hereby affect anything done under the let-
"ters of administration. So far as the estate has been
"properly administered by the administratrix, it must stand
"as administered, and she must account according to law.
"The executor will have power only over so much of the
"estate as remains unadministered."

In another case:

"A final decree was entered directing (the administrator)
"to pay over * * * whatever amount should remain

"in his hands upon a final settlement of the estate.

"In pursuance of the decree (the administrator) paid over " * * * the amount found by the court to be in his "hands upon the settlement. * * *

"Three years after the estate had been finally settled as "before stated, administration upon the estate with the will "annexed was granted to the complainant. * * *

"Why rest until the decree is entered and complied with "and then come forward and attempt to enforce a second "payment from the administrator? It cannot be done. "From anything which appears, the estate was honestly set- "tled by the administrator, and the surplus in his hands "properly disposed of. Equity does not require anything "further. Law does not require it."

Barkaloo v. Emerich, 18 Ohio, 268.

In a case where there was an administration, and a subsequent discovery of a will and the appointment of an executor, the Supreme Court of Ohio, said:

"The discovery of a will and the appointment of an ex- "ecutor only operate as a repeal of the grant of adminis- "tration, which did not avoid all mesne acts. A repeal up- "on citation, although the goods were sold *pendente lite*, "does not render the act void. Consequently the applica- "tion, on the part of the administrator, to have the contract "specifically executed, and the record of proceedings under "it, are not rendered void by the discovery of a will, and "the appointment of an executor who accepted the trust.

"Every act of the administrator has the same validity as "if he had not been superseded, but had continued to per- "form his duties until final settlement and distribution of "the estate."

Bigelow's Ex'rs. v. Bigelow's Adm'rs., 4 Ohio, 138.

The following are the points raised by the demurrer:

I.

This action is barred by the statute of presumption of payment.

1. By the act of the Territorial Legislature the common law of England was adopted as the law of the Territory of Missouri, January 20, 1816.

By the common law a judgment is presumed to be paid after the lapse of twenty years.

By the Revised Statutes of Missouri of 1835, p. 396, sec. 1, it was provided that every judgment and decree of court thereafter rendered should be conclusively presumed to be paid and satisfied after the expiration of twenty years from the time of rendering such judgment or decree.

This statute has been re-enacted to the present day, is still substantially unchanged, and is now as follows:

"Every judgment, order and decree of any court of rec-
"ord of the United States, or of this or any other State or
"territory, shall be presumed to be paid and satisfied after
"the expiration of twenty years from the day of the rendi-
"tion of such judgment, or order, or decree; but in any
"suit in which the party against whom such judgment, or-
"der or decree was rendered, or his heirs or personal repre-
"sentatives shall be a party, such presumption may be re-
"pelled by proof of payment or of written acknowledgment
"of indebtedness, made within twenty years, of some part
"of the amount recovered by such judgment, order or de-
"cree; in all other cases it shall be conclusive."

Rev. Stat. of Mo., 1879, vol. 1, p. 550, sec. 3251.

The only exceptions to remove the conclusive presumption—to-wit: payment or written acknowledgment within twenty years—are identically the same as in the statute of 1835, and have continued without change to the present time.

The Supreme Court of Missouri has held that the Statute is merely cumulative and does not change the common law.

"Judgments rendered prior to 1835, are not affected by "the statute of presumption of payment of that year, but "are presumed to be paid after twenty years from their "rendition."

Clemens v. Wilkinson, 10 Mo. 98.
Smith's Ex'r v. Benton, 15 Mo. 371.

"There is no sort of propriety in confounding the Stat- "ute of Limitations with the presumption of payment aris- "ing from lapse of time. As defenses the two are wholly "distinct in their applications and incidents.

Cape Girardeau v. Harbison, 58 Mo. 90.

Vide also,

King v. Manville, 29 Ind. 134.

The appellant refuses to pursue her remedy, if she has one, under the judgment against Hammond, because it is apparent that the judgment is conclusively presumed to be be paid. And she would under the judgment have no possible claim against Hammond, since the proviso in the Statute as to the removal of parties out of the State, after cause of action accrued, has no application to the common law presumption of the payment of a judgment after twenty years.

"Until the time has elapsed since the rendition of a "judgment which the law designates as the period when

"the presumption of payment may be indulged, such judg-
"ment may be enforced * * * * * in the event of
"the death of the judgment debtor by exhibiting it as a
"demand against his estate for allowance and classification
"*within twenty years of its rendition.*"

Ewing v. Taylor, 70 Mo. 394.

To have availed herself of any right under this judgment, appellant should have had administration taken out on Hammond's estate, as she might have done, more than forty years ago.

The statutes of Missouri authorize "any person interested" to compel an administration on motion, where the persons entitled to administer have failed so to do.

1845, Revised Stat., p. 63, sec 8.
1855, Revised Stat., vol. 1, p. 114, sec. 9.
1865, General Stat., p. 481, sec. 9.
1879, Revised Stat., vol. 1, p. 3, sec. 8.

2. Appellant consequently bases her claim on the money had and received by Hammond on the sale of the lands of Clark's estate, claiming that it was to her use, but this claim is barred by the Statute of Limitations.

The Territorial law of Missouri, passed July 4, 1807.
Territorial Laws, vol. 1, p. 144,

provided that an action of this character should be brought within five years after the cause of action accrued.

This law was re-enacted in 1825.

Revised Statutes of Mo., 1825, p. 510,

and has been the law ever since.

Revised Statutes of Mo., 1835, p. 393.
Revised Statutes of Mo. 1879, sec. 3230.

But the cause of action did not accrue to appellant at all,

because Relf and Chew were the *de facto* and *de jnre* executors of Daniel Clark's estate, and continued so to be until the new will was established in 1856.

Relf and Chew had the right of action, and that right was exercised by them in 1819, and the amount was ascertained and merged in the judgment.

Relf and Chew were then responsible for the proceeds of the judgment to the administrator of the new will. And whether they were so or not, and whether they properly accounted or not, there is nothing stated in the bill which gives appellant any right of action against Hammond.

The bill alleges that Relf and Chew employed Hammond, and that under that employment he received the monies sued for, prior to April, 1819, and that he left the State in December, 1824, and never returned.

Now, if Hammond was responsible to anyone, it was to Relf and Chew who employed him, and if there was no merger of the cause of action in the judgment, then it was barred as an account before Hammond left the State, and appellant cannot take it out of the statute by waiving Hammond's unauthorized action, and making him, forty years after his death, and sixty years after the transaction occurred, *her* agent, instead of the agent of Relf and Chew.

Moreover, appellant states in her bill that she had no legal right to sue Hammond during his lifetime. How has his death operated to create in her a right against him which did not exist in his lifetime?

3. It was, however, provided by the statute,

Territorial Laws of Missouri, vol. 1, p. 144, sec. 2,

that if any person *entitled to bring such an action*, as the one in the bill mentioned, be, at the time the cause of action accrued, within the age of twenty-one years, such per-

son might bring such action within five years after the removal of such disability.

Now the appellant in her bill states that the cause of action, if any cause of action existed, accrued prior to April, 1819; that she became twenty-one years of age in 1827, (She also attempts to set up other disabilities under successive covertures, which are wholly impertinent); and that *she had no legal right of action* against Hammond during his lifetime. Thot is to say: Though the cause of action accrued in 1819, and though appellant was then within the age of twenty-one years, she was not a *person entitled to bring such an action.*

Under what theory appellant can ask this court for relief, when the bill shows that she was not, under the statute, entitled to plead her disabilities, it is difficult to imagine.

4. Appellant claims furthermore that, inasmuch as no administration was taken out on Hammond's estate until 1879, she has the statutory period after the granting of letters of administration, to establish her claim however stale.

If such a doctrine could be established, there would be an end to all statutes of limitation in case of death and failure to administer.

That it is wholly untenable is sufficiently shown by the following cases.

In

McKenzie v. Hill, Adm'r.. 51 Mo. 303,

the demand was rejected because the note had been due *more than ten years* before it was filed. *When* the letters of administration were taken out does not appear.

In

Ayers Adm'r v. Donnell, 57 Mo. 396,

the court decided that the cases which speak of the bar of the statute not running till letters of administration are

granted, refer to the *special bar* of three (*now two*) years, *but do not refer to the general statute of limitations.*

5. As to limitations in equity, and especially under our statute, see

Martin, Assignee v. Smith, 1 Dillon C. C. R. p. 85, 93 *et seq.*
Bliss v. Prichard, 67 Mo. 181–190.
Rogers v. Brown, 61 Mo. 187.

II.

If it be that a court of equity could have jurisdiction of the cause, there is no fraud alleged in the bill which can prevent the running of the statute and confer jurisdiction.

It is only secret or concealed fraud which can so operate.

Angell on Limitations, 6 ed., p. 198, secs. 189–190;
Bishop v. Little, 3 Greenleaf, R. 405;
Martin Assignee v. Smith, 1 Dill. 96, and cases cited.

In the bill there is no such fraud, or indeed any equitable fraud asserted. The only allegations by which it is pretended to be established are, in effect:

1st. That in December, 1824, Hammond changed his residence from Missouri to Edgefield County, South Carolina, and

2d. That he died there in 1842.

Even if an equitable fraud had been alleged appellant is still remediless under the laws of Missouri, for the bill

shows that she had full knowledge in 1848, of all the facts in the case.

On November 23, 1855,

Revised Statutes of Mo., 1855, p. 1048, sec. 3,

it was enacted that "an action for relief on the ground of fraud" might be brought within five years after the *discovery* of the facts, constituting the fraud, by the injured party.

This law was changed in 1865.

General Statutes of Mo., 1865, p. 747, sec. 10, as follows:

"The cause of action in such case to be deemed not to "have accrued until the discovery by the aggrieved party, "*at any time within ten years*, of the facts constituting the "fraud."

The same rule prevails now,

Revised Statutes of Mo., 1879, vol I., p. 547, sec. 3230.

This law applies as well to legal as to equitable fraud and whatever the nature of the fraud, if any is alleged, may be held to be, it is certainly barred under the statutes cited above.

Martin Assignee v. Smith, 1 Dillon 85;
Rogers v. Brown, 61 Mo. 187.

III.

It sufficiently appears from the allegations of the bill that appellant had an adequate remedy at law, (provided she had any right at all in the premises), more than fifty years ago—and that that remedy was not against Hammond.

If she treats Relf and Chew as the administrators of the will of 1811, then her remedy was against them, or against the administrator under the will of 1813, for a legatee or distributee can only obtain title to personal property, money, or choses-in-action through the executor or administrator.

Gillet v. Camp, 19 Mo. 404;
Hastings v. Meyer's Admr., 21 Mo. 519;
Hanenkamp's Admr. v. Borgmeier, 32 Mo. 569.

If she refuses to treat Relf and Chew as administrators, though she alleges in the bill that they were such, then under the authority of

Gaines v. Hennen, 24 How. 553,

her remedy was against the parties in possession of the lands of Daniel Clark's est. holding under deeds from Hammond.

Her ignorance of the facts, which she alleges in one section of the bill, and denies and disproves in another, and her extended litigation with other parties are wholly insuf ficient reasons for her failure to pursue her rights.

IV.

If so be that the cause of action is equitable, still equity will not enforce it for the reason that the demand is stale.

The record shows that as early as 1848 Myra Clark Gaines and her husband brought suit in the Circuit Court of the Eastern District of Missouri against Peter Lindell and others, who were the legal representatives of Relf and Chew, holding the lands mentioned in the bill under the execution sale therein specified.

From the allegations of her bill it appears that she was fully informed, more than thirty years before this action

was brought, of all the facts which she elsewhere alleges she did not discover until 1879.

Surely equity will not relieve against such total want of diligence.

"Courts of equity have always considered it of the great-"est possible importance that parties should not sleep on "their rights. Champion v. Higby, 1 Russ. and Myl. 539, "and affirmed by Lord Cottenham 18th March, 1846. If the "mere allegation of fraud enabled anyone to open transac-"tions many years after he had notice of it, this doctrine "might itself be the means of perpetrating the greatest "frauds, in cases where the evidence being lost by the lapse "of time an innocent party might be left defenceless. I "have no hesitation or doubt that this court would violate "all principles on which it has acted, if it allowed the "matter to be now opened.

"It is said, in this case, that if the court were to open "the transaction it would produce no injustice, because "there are an abundance of assets undistributed. Nothing "could be more dangerous than to proceed on such a prin-"ciple. This court must proceed on fixed rules, and if it "opened this transaction merely because there are abundance "of assets to set the matter right, it must do so in other "cases where the property has been distributed and enjoyed "for the lapse of half a century. I am of opinion, on the "whole of this case, that this bill must be dismissed with "costs."

Browne v. Cross, 7 Eng. L. & Eq., 263.

V.

That "the bill is merely a petition for money had and "received," is apparent to the most casual observation, for

it is specially alleged that it is brought to recover the money in Hammond's hands, and that the judgment of 1819, is to be used simply as evidence to prove that the debt then existed.

That it "does not show any ground upon which a Court "of Equity will take jurisdiction of such an action," would seem to be as fully established in the premises, as it must be granted upon general principles.

It being alleged in the bill, that a judgment had been recovered against Samuel Hammond, by Relf and Chew, acting as executors, and administering upon Clark's estate, by his own appointment under the will of 1811; that the same cause of action was tried then as is alleged in the appellant's bill herein, and that said judgment has never been reversed, annulled or set aside, the matter is *res adjudicata*, and cannot again be the subject of an action.

Appellant did not succeed to the rights of Relf and Chew under the judgment in their favor in 1819. Under the authority of the cases cited, they were responsible to the administrator under the will of 1813.

If she *did* so succeed, the bill sets out no adequate reason either in law or equity, for her failure to prosecute her rights under said judgment, until 1879 or 1880.

If the said judgment does *not* enure to her benefit directly, appellant has no standing in court, for Relf and Chew who acted as executors under the will of 1811, have been judicially determined by this Honorable Court, to have acted without any authority in the selling of lands. Consequently having no authority in themselves to sell the lands of Clark's estate, what they did in the premises, and what was done by Hammond as their agent, in making such sales, and assuming to pass title to the lands of the estate was void, as

to her. If she had any rights, they might, perhaps, have been asserted against the land so belonging to her father's estate. *That*, however, she is not pretending to do, and she has slept on whatever rights she had for more than fifty years.

The appellant must hold either that the judgment of 1819 was *valid* or that it was *void*. There is no middle ground.

If it was a *valid* judgment the debt of Hammond to Clark's estate, if any such debt existed, became merged therein, and the Statute of the presumption of payments immediately attached. The lapse of twenty years is *evidence* of *payment*.

If it was a *void* judgment it was such because Relf and Chew had exceeded their powers, and Hammond was not responsible to them for monies in his hands belonging to other parties, much less to the appellant.

Moreover, if it was a *void* judgment it can in no sense be held or taken to be proof of anything.

This court has heretofore passed upon the actions of Relf & Chew as executors, in making sales of lands, in the following language.

"In the year 1813, they applied for a power of attorney "from Mary Clark, who had been named in the will of "1811, as universal legatee, to authorize them to sell the es- "tate in her behalf. The power was given, and under it, "without any notice to the court of probate, which ought "to have been given, and the power filed in it, they contin- "ued as the testimony in this case shows, to act as execu- "tors, and to dispose of the estate of Clark, both real and "personal, property in co-partnership, and other property "separately belonging to Clark, without ever having received

"any permission to do so from the court of probate, and "that should have been obtained, as Mary Clark had not "been acknowledged by that court as the universal legatee "of Clark."

The court further decreed that the acts of Relf & Chew in selling the real estate of Daniel Clark "were illegal, null and "void, and in fraud of the rights of the person or persons "entitled to the succession of the said Daniel Clark."

Gaines v. Hennen, 24 Howard, 553.

If this principle obtain here the appellant can take nothing by this bill, for she is not seeking to recover the property as in that case, but is endeavoring to establish as valid a transaction which this court had declared to be "illegal, null and void" as against her. And is endeavoring to claim the proceeds of void sales, which have not alienated her title, which proceeds would seem to belong rather to the purchasers of the void titles.

Appellant is seeking to avoid the presumption of the payment of the judgment, by suing for an account, and using the judgment as proof of debt, but under authority of Gaines v. Hennen, *supra*. Hammond who is declared to be merely the agent of Relf and Chew, never had any authority to sell the lands of the Clark estate, and his conveyances passed no title; consequently the monies he received were not to the use of Clark's estate, or of Relf and Chew, or of the appellant, but to the use of the purchasers who received no titles under the void sales.

The bill then is utterly without equity, and in no possible view, does it present a case which appellant has any right to maintain.

The judgment of the Circuit Court of the Eastern District

of Missouri, sustaining the demurrer and dismissing the bill, should be affirmed.

Respectfully submitted,

HENRY H. DENISON,

Counsel for Appellee.